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June 18, 2024

VIA ECF

The Honorable Valerie Figueredo, U.S.M.J.
U.S. District Court for the Southern District of New York
Daniel Patrick Moynihan Courthouse
500 Pearl Street, Room 1660
New York, NY 10007

Re: GateGuard, Inc. v. Amazon.com, Inc., No. 21 Civ. 9321 (JGK) (VF)

Dear Judge Figueredo:

We write as counsel for Amazon to follow up on an issue discussed with the Court during the May 28, 2024 conference. Specifically, Amazon respectfully seeks a ruling requiring GateGuard to comply with the Court's March 5, 2024 order holding that GateGuard waived the attorney-client privilege over its document production (ECF No. 155) by requiring GateGuard to produce responsive documents withheld from production based on attorney-client privilege. Amazon seeks a ruling so that the issue may be resolved in advance of the deposition of GateGuard CEO Ari Teman, in both his personal capacity and as GateGuard's corporate representative, which is scheduled to take place in three weeks (July 9–10, 2024).

The Court's March 5 waiver order followed GateGuard's monthslong failure to produce a privilege log covering its November and December 2023 document productions, and its failure to claw back documents it produced despite alleging they were privileged. Amazon sought a ruling that GateGuard had waived privilege, and during the February 28, 2024 discovery conference in this matter, GateGuard committed to produce its privilege log by March 1. *See* Hr'g Tr. at 4:2–6:8 (Feb. 28, 2024) ("THE COURT: Mr. Quainton, can you commit to producing the privilege log by Friday, March 1? MR. QUANTON: Yes, I can."). The Court therefore issued a written order that "Gate[G]uard will provide Amazon a privilege log by **March 1, 2024.**" ECF No. 140 at 1 (emphasis in original).

GateGuard did not produce a privilege log on March 1 or seek an extension to do so. On March 4, 2024, Amazon notified the Court that GateGuard had not produced a privilege log. ECF No. 152. On March 5, the Court entered an order holding that "Gate[G]uard's failure to provide a timely privilege log, despite ample time to do so, constitutes a waiver of the privilege with respect to any documents in its November and December 2023 productions." ECF No. 155 at 2.

On March 6, GateGuard sent Amazon a privilege log, disclosing for the first time that it had withheld from production approximately 2,240 responsive document families. In addition to being untimely, GateGuard's privilege log was inadequate on its face, failing to comply with Federal Rule of Civil Procedure 26(b)(5)(A), including by failing to state the participants in many communications, by listing communications plainly sent to third parties, and by failing to state a reason for the claims of privilege. On March 7, Amazon wrote to GateGuard that its privilege

GIBSON DUNN

Hon. Valerie Figueredo, U.S.M.J.
June 18, 2024
Page 2

claims were waived and that GateGuard must produce all responsive documents withheld from its 2023 productions, including those on the log. On March 18, GateGuard filed a motion for reconsideration of the Court's March 5 waiver ruling, ECF No. 163, which Amazon opposed, ECF No. 167. In the more than three months that have passed, GateGuard still has not responded to Amazon's correspondence nor produced any withheld documents. GateGuard's pending motion for reconsideration does not stay the Court's March 5 order nor excuse GateGuard from its obligation of timely compliance. Amazon seeks clarity from the Court in advance of the upcoming deposition of Mr. Teman and respectfully requests the Court order GateGuard to produce the withheld documents no later than July 2, 2024, one week in advance of Mr. Teman's deposition.

Respectfully submitted,

/s/ David Salant
David Salant

CC: All counsel of record (via ECF)